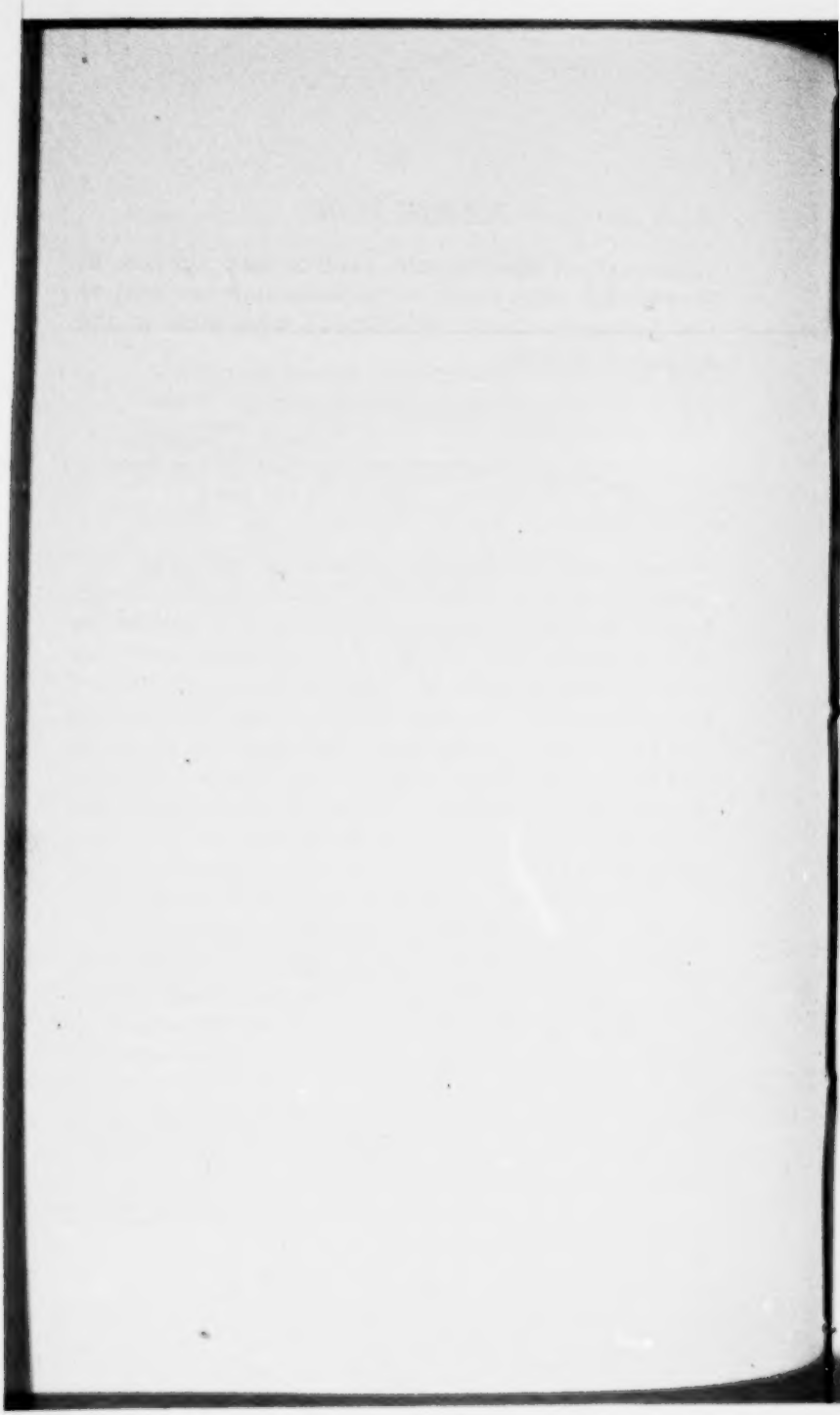

Supreme Court of the United States.

No. 86.—October Term, 1903.

The Royal Insurance Company, Plaintiff in Error, vs. Ruperto Martin, as Executor of the Will of Francisco Martin, Deceased.	In error to the District Court of the United States for the District of Porto Rico.

[January 11th 1904.]

Mr. Justice Harlan delivered the opinion of the Court.

This was an action by the executor of the insured on a policy of insurance made by the Royal Insurance Company, a British corporation, whereby that company insured Francisco Martin against loss or damage by fire to the amount of seven hundred pounds on a certain building at Coto Laurel, District of Ponce, Porto Rico, and for nine hundred pounds on the stock in trade contained in such building.

The declaration alleged and the fact was not disputed that during the term of the policy all the property insured was destroyed by fire. The case was tried by the court and a jury and a verdict was returned in favor of the plaintiff for $7,623, the court refusing to require the jury to find the damages, separately, as to the building and the stock of goods; and for the above amount judgment was rendered against the company.

The defendant in error disputes the jurisdiction of this court to review the judgment below. If this position be well taken, the writ of error should be dismissed without considering the merits of the case. *Continental Nat. Bank* v. *Buford*, 191 *U. S.* 119. We must therefore examine the question of the jurisdiction, which depends upon the scope and effect of various statutory provisions, including those relating to the court established by Congress in Porto Rico. We will look at the statutes according to the respective dates of their enactment.

By section 702 of the Revised Statutes of the United States it is provided that "the final judgments and decrees of the Supreme Court of any Territory, except the Territory of Washington, in cases where the value of the matter in dispute, exclusive of costs, &c., exceeds $1,000, may be reviewed and reversed or affirmed in the Supreme Court of the United States upon writ of error or appeal, in the same manner and under the same regulations as the final judgments and decrees of a Circuit Court.

In the Territory of Washington the value of the matter in dispute must exceed $2,000, exclusive of costs. And any final judgment or decree of the Supreme Court of said Territory in any cause [when] the Constitution or a statute or treaty of the United States is brought in question may be reviewed in like manner."

This provision was modified by the act of March 3d 1885, entitled "An act regulating appeals from the Supreme Court of the District of Columbia and the Supreme Courts of the several Territories;" for by the latter act it was provided: "§ 1. That no appeal or writ of error shall hereafter be allowed from any judgment or decree in any suit at law or in equity in the Supreme Court of the District of Columbia, or in the Supreme Court of any of the Territories of the United States, unless the matter in dispute, exclusive of costs, shall exceed the sum of $5,000. § 2. That the preceding section shall not apply to any case wherein is involved the validity of any patent or copyright, or in which is drawn in question the validity of a treaty or statute or an authority exercised under the United States; but in all such cases an appeal or writ of error may be brought without regard to the sum or value in dispute." 23 *Stat.* 443, *c.* 355.

Then came the act of March 3d 1891, "to establish Circuit Courts of Appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes." 26 *Stat.* 826. The 5th section of that act prescribes the cases that may be brought directly to this court from the District Courts or from the existing Circuit Courts of the United States, while the 6th section provides that the Circuit Courts of Appeals "shall exercise appellate jurisdiction to review by appeal or by writ of error final decision in the District Court and the existing Circuit Courts in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law"—the judgments or decrees of the Circuits Courts of Appeals to be final "in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different States; also in all cases arising under the patent laws, under the revenue laws, and under the criminal laws and in admiralty cases." Further, by the same section: "In all cases not hereinbefore, in this [6th] section, made final, there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States when the matter in controversy shall exceed $1,000, besides costs." § 6. The 13th section of the act provides: "Appeals and writs of error may be taken and prosecuted from the decisions of the United States Court in the Indian Territory to the Supreme Court of the United States, or to the Circuit Court of Appeals in the Eighth Circuit, in the same manner and under the same regulations as from the Circuit or District Courts of the United States, under this act." And the 15th section

is in these words: "That the Circuit Court of Appeal *in cases* in which the judgments of the Circuit Courts of Appeal are made *final* by this act shall have the same appellate jurisdiction, by writ of error or appeal, to review the judgments, orders and decrees of the Supreme Courts of the several Territories as by this act they may have to review the judgments, orders and decrees of the District Court and Circuit Courts; and for that purpose the several Territories shall, by orders of the Supreme Court, to be made from time to time, be assigned to particular circuits." 26 *Stat.* 826.

This brings us to the act of April 12th 1900, *c.* 191, entitled, "An act temporarily to provide revenues and civil government for Porto Rico and for other purposes." 31 *Stat.* 85, *c.* 191.

By section 33 of that act it is declared, among other things, that the judicial power shall be vested in the courts and tribunals of Porto Rico as then established and in operation, under and by virtue of certain General Orders promulgated by military authority—the Chief Justice and Associate Justices of the Supreme Court of Porto Rico and the Marshal thereof to be appointed by the President, by and with the advice and consent of the Senate, and the judges of the district courts by the Governor, by and with the advice and consent of the executive council.

By the 34th section of that act Porto Rico was constituted a judicial district to be called the District of Porto Rico with a district judge, a district attorney and marshal to be appointed by the President, by and with the advice and consent of the Senate, and with a district court called the "District Court of the United States for Porto Rico," which court, in addition to the ordinary jurisdiction of District Courts of the United States, shall have jurisdiction of all cases cognizant in the Circuit Courts of the United States.

The section of the Porto Rico act upon which the question of our jurisdiction mainly depends is the 35th, which is in these words: "That writs of error and appeals from the final decisions of the supreme court of Porto Rico and the district court of the United States shall be allowed and may be taken *to the Supreme Court of the United States* in the same manner and under the same regulations and *in the same cases* as from the supreme courts of the Territories of the United States; and such writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right claimed thereunder is denied; and the supreme and district courts of Porto Rico and the respective judges thereof may grant writs of *habeas corpus* in all cases in which the same are grantable by the judges of the district and circuit courts of the United States. All such proceedings in the Supreme Court of the United States shall be conducted in the English language." 31 *Stat.* 85, *c.* 191.

It thus appears that writs of error and appeals may be prosecuted directly to this court from the District Court of the United States for Porto Rico, in the same manner, under the same regulations, and "in the same cases" as from the Supreme Courts of the Territories of the United States.

Could a case like the one before us have been brought directly to this court from the Supreme Court of one of the Territories of the United States? If so, our jurisdiction in this case cannot be disputed under the Porto Rico act.

The question just stated must be answered in the affirmative, if we look alone at section 702 of the Revised Statutes, and the act of March 3d 1885, c. 355; for, it is clear from the express words of those enactments that this court may review the final judgment of the Supreme Court of one of the Territories of the United States in any case, without regard to the sum or value in dispute, where the Constitution or a statute or treaty is brought in question, and in every other case whatever where the sum or value in dispute exceeds $5,000, exclusive of costs.

Is this result, so far as the final judgments of the District Court of the United States for Porto Rico are concerned, affected by anything in the Circuit Court of Appeals act of 1891? We think not. That act, no doubt, contemplated a review by the appropriate Circuit Court of Appeals, first, of the final judgments of the United States Court in the Indian Territory in all cases covered by section 702 of the Revised Statutes and the act of March 3d 1891; second, of the final judgments of the Supreme Courts of the other Territories of the United States in cases the judgments in which, by that act (§ 6), are made final. No provision is found in the act of 1891 for the review in a Circuit Court of Appeals of the judgment of the Supreme Court of a Territory of the United States in a case of the class the judgment in which, if rendered in a Circuit Court of Appeals, is not final. So that the jurisdiction of this court to review the judgments of the Supreme Courts of the several Territories in that class of cases was the same after as before the passage of that act. *Shute* v. *Keyser*, 149 *U. S.* 649, 657. Clearly this case is not of the class the judgment in which, if rendered in the Supreme Court of a Territory of the United States, to use the words of the act of 1891, is reviewable in a Circuit Court of Appeals under that act. It is not a patent, revenue or criminal case, nor one in which the jurisdiction of the court below depended entirely upon the opposite parties to the controversy being aliens and citizens of the United States or citizens of different States. But it is one which, if it had been determined by the Supreme Court of one of such Territories of the United States, could have been brought here directly, upon writ of error, after as well as before the passage of the act of 1891. Our conclusion must, therefore, be that the jurisdiction of this court cannot be denied by reason of any provision in the act of 1891.

This view is strengthened by what we deem the better construction of the Porto Rico act of 1900. That act does not refer to the Circuit Court of Appeal act of 1891, nor contain any provision looking to the assignment of Porto Rico to one of the established Circuits. This tends to show that it was the intention of the act of 1900 to establish a direct connection between this court and the United States Court for Porto Rico in respect of every case which, if determined by the Supreme Court of a Territory of the United States, could have been brought here under the statutes in force when the act of 1891 was passed. In our opinion, Congress did not intend that any connection should exist between the United States Court for Porto Rico and any Circuit Court of Appeals established under the act of 1891.

These views as to the scope and effect of the Porto Rico act of 1900 is not at all affected by the provisions in the acts relating to the re-examination of the final judgments of the highest courts of the Indian Territory, Hawaii and Alaska. *Indian Territory*, 26 *Stat.* 830, *c.* 517, §13; *Hawaii*, 31 *Stat.* 141, 158, *c.* 339, §86; *Alaska*, 31 *Stat.* 321, 345, *c.* 786. Those acts had exclusive reference to the particular Territories named—each, upon its face, showing that the final judgments of the courts of those Territories, at least in certain cases, should be reviewable, primarily, in a designated Circuit Court of Appeals of the United States. No such provisions are found in the act of 1900, and this court has not assumed to assign Porto Rico to any Circuit of the United States. The Territories of the United States, referred to in the 15th section of the act of 1891, are, in our opinion, those which it was contemplated would be assigned to some Circuit, and they do not embrace Porto Rico; and the words in the act of 1900, "in the same manner and under the same regulations and in the same cases as from the Supreme Court of a Territory of the United States," refer not to the act of 1891 but to those general statutes authorizing this court to review the final judgment of the Supreme Court of a Territory of the United States in every case, without regard to the sum or value in dispute, where the Constitution of the United States or a treaty thereof or an act of Congress is brought in question and the right claimed thereunder is denied, and in every other case where the sum or value in dispute exceeds $5,000, exclusive of costs. If Congress had intended that the judgments of the United States Court for Porto Rico should, in any class of cases, be re-examined in some Circuit Court of Appeals of the United States, it would have so declared by appropriate words. It did not so declare.

For the reasons stated, we hold that our jurisdiction to re-examine it cannot be questioned.

We come now to the merits of the case; our attention being first directed to the questions arising under that clause of the policy providing that it shall not cover "loss or damage by fire happening during the existence of any invasion, foreign enemy, rebellion, insurrection, riot, civil commo-

tion, military or usurped power, or martial law within the country or locality in which the property insured is situated, unless proof be made to the satisfaction of the directors that such loss or damage was not occasioned by or connected with, but occurred from a cause or causes independent of the existence of such invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power or martial law."

As the words of the policy are those of the company, they should be taken most strongly against it, and the interpretation should be adopted which is most favorably to the insured, if such interpretation be not inconsistent with the words used. *National Bank* v. *Insurance Company*, 95 *U. S.* 673, 678–9; *Liverpool &c. Ins. Co.* v. *Kearney*, 180 *U. S.* 132, 136; *Texas & Pacific Railway Co.* v. *Reis*, 183 *U. S.* 621, 626. In this view the above words should be held to mean that the policy covered loss by fire occurring during the existence of (if not occasioned by nor was connected with) any invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power, or martial law, in the general locality where the property insured was situated. If the loss so occurred then the company was entitled to demand, before being sued, that proofs be furnished showing that the loss was not occasioned by or connected with, but was from causes independent of, such invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power or martial law. But the company made no demand for proofs on this point. On the contrary, the formal production of such proofs was, in effect, waived; for the company assumed that what occurred in the locality, at the time of the fire, constituted a riot, which relieved it from all liability. It, therefore, gave notice by its agents that as the fire and the destruction of the goods "were produced by a riot they were not compelled to pay," and that "the policy would not be paid." A general, absolute refusal to pay in any event, or a denial by the company of all liability under its policy, dispensed with such formal proofs as a condition of its liability to be sued, and opened the way for a suit by the assured in order that the rights of the parties could be determined by the courts according to the facts as disclosed by evidence. It was so held by this court in a case of fire insurance, *Tayloe* v. *Fire Insurance Company*, 9 *How.* 390, 403; and the same principle was recognized as applicable in a case of life insurance. *Knickerbocker Life Insurance Co.* v. *Pendleton*, 112 *U. S.* 696, 709. To the same effect are authorities cited by text-writers. 2 *May on Insurance*, 3*d edit.* § 469; 2 *Biddle on Insurance*, § 1139; 2 *Wood on Fire Insurance*, 2*d ed.* § 445. Now, whether there was any substanial connection between the fire and military or other disturbance of the kind specified, existing in the locality where the property

was situated, was a question of fact, and it was properly left to the jury. The court, referring to the above clause of the policy, charged the jury: "A fair construction of that condition, in the opinion of the court, is that in order to excuse this company from liability in case of loss of property by fire, that invasion by foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power or martial law, must have been occurring within the section of the country where this loss occurred, or within the locality and within such radius of country where the loss occurred, that damage arose to property by reason of the existence of that rebellion, invasion, insurrection, civil commotion, military or usurped power, or martial law. And I further tell you, gentlemen, that if you believe from the evidence that this destruction of property did not occur from any of these causes, and occurred from a cause independent of the existence of any foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power or martial law, then you should find, so far as this defense was concerned, for the plaintiff in damages whatever you think may have been his loss."

While there is some little confusion in this part of the record, we think that the trial court did not misconstrue the policy, nor commit any error upon this particular point of which the plaintiff was entitled to complain. It is to be taken that the jury found, upon the whole evidence, that the loss was occasioned by causes independent of the existence of any invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power, or martial law. The facts under this issue having been fairly submitted to the jury, its finding cannot be disturbed.

An important question remains to be considered. It arises out of the interest which the assured had in the property at the time of the fire. The evidence showed that the original policy was issued to Francisco Martin on the 12th day of March 1877, he being at that time the sole owner of the building and of the goods contained in it. The policy was renewed from year to year, the last one being dated March 12th 1898, and extending until March 12th 1899. The fire occurred in August 1898, the assured being then alive. He did not die until October 1899. Now, at the time of the fire, the goods insured had, by act of the assured, become, *in their entirety*, the property of Martin Brothers, a firm or society composed of two sons of the assured as active partners, and of himself as silent partner. The father turned over the business to the control and management of the two sons, and to them surrendered the custody of the goods constituting the stock in trade. At what date the sons acquired their interests in the goods and in the business does not distinctly appear. But it was before the fire; and of the change whereby the father ceased to be the sole owner of the goods described in

the renewal policy and whereby also they became the property of the firm of Martin Brothers, no notice whatever was given to the company prior to the fire.

The question is whether such change in the ownership of the goods insured—no change occurring in the ownership of the building—discharged the company from all liability on the policy under that clause providing that the policy should cease "to be in force as to any property hereby insured which shall pass from the insured to any *other person otherwise* than by due operation of law, unless notice thereof be given to the company, and the subsistence of the insurance in favor of such other person be declared by a memorandum endorsed hereon by or on behalf of the company."

Upon the question whether an insurance policy, of the general class to which the one in suit belongs, continues in force after a sale or transfer by the assured of his interest in the property insured, the adjudged cases are by no means in accord, and it will serve no useful purpose to make an extended review of them and show wherein they differ. It will be found upon examination that each policy contained language peculiar to itself, and upon that language the particular case turned. Of course, in every case, the fundamental inquiry must be as to the intention of the parties, to be gathered from the words of the policy; always, however, interpreting the policy most favorably for the insured, where it is reasonably susceptible of two constructions.

On the face of the policy in suit it appears that the buildings and the goods contained in them were insured separately, seven hundred pounds on the building and nine hundred pounds on the stock in trade. One construction of the policy is that if either the building *or* the stock in trade should pass from the assured to another person, then the policy should cease as to *all* the property insured. But another construction, the one most favorable to the assured, which is not unreasonable, and which is not forbidden by the words used, is that as the building and the stock in trade were separately insured the policy should cease to be in force only as to the particular property insured that passed from the assured without notice to the company. The latter is the better construction, and we hold that it is to be considered as if the building was covered by one policy and the goods by another. Whatever may have been the extent of the interest acquired by the firm of Martin Bros. in the goods, no interest in the building passed to them. The building remained, in its entirety, the sole property of the assured, up to the time of the fire, and the policy may reasonably be and therefore ought to be so construed as not to preclude a recovery in respect of its destruction by fire.

But in respect of the goods in question, the case depends upon other considerations. When the goods were insured they were in their entirety

the sole property of Francisco Martin, the assured. He was the legal owner of the whole of them. They were in his custody, and subject to his exclusive control. But at the time of their destruction by fire the ownership of the goods, in their entirety, had, by transfer from the assured, passed to Martin Brothers, and became, without notice to the company, subject to the exclusive control, in their entirety, of that firm. Such a change of ownership and control, it must be held, avoided the policy, *unless* it was kept alive by the mere fact that the assured although taking no active part in the business of the firm was yet a silent partner, and as such had some interest in the insured property. But that fact cannot be given the weight suggested without ignoring altogether the reasons which, it must be assumed, induced the company to incorporate into its policy the provision that if any property insured passed from the assured to another person without notice to the company, the policy should cease to be in force. It may well be that an insurance company would be willing to insure property owned by a particular person of whose character and habits its agent had knowledge or information, but unwilling to insure the same property if owned by that person in connection with others. Prudence requires that a company, before insuring against fire, should be informed as to the actual ownership of the property proposed to be insured, and know who, in virtue of such ownership, will be entitled to its custody and to control it during the term of the policy. The provision that the policy in this case should cease to be in force from the moment the insured property passed from the assured to others without notice to the company implied not only that the company relied upon the integrity and watchfulness of the assured, but that if he looked to the company for indemnity against loss by fire he must take care not to allow the property to "pass" from him to others, without notice to the insurer. The assured, without notice to the company, did pass the goods in question to a firm, each member of which thereby acquired an interest *in the whole of the goods* transferred. The ownership of the firm was in law and in fact distinct from the original sole ownership of the assured. Practically, for all purposes of guarding the goods insured against destruction by fire, they passed to the active partners who were strangers to the property at the date of the policy—the assured, as a silent partner, retaining no interest in any particular part of the goods, and being under no obligation as between himself and the active partners, to care for the safety of the property. Its safety, after the transfer, depended altogether upon the watchfulness of the active partners in whose possession the goods were up to the fire. It only remained for the original sole owner, after passing the goods in their entirety to the firm of Martin Brothers, in which he was a silent partner, to receive such profits as accrued to him from their use in the business as conducted by the active partners.

We are of opinion that the case was not tried in accordance with a sound construction of the terms of the policy relating to the goods insured. The court proceeded upon the ground that there was no evidence of such alienation or change of ownership as avoided the policy in respect of the goods. In this error was committed, and a new trial must be had in conformity with the views we have herein expressed.

The judgment of the court below is reversed, and the cause is remanded with directions to set aside the judgment and grant a new trial.

Reversed.

True copy.

Test:

Clerk Supreme Court, U. S.